

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

BRIAN KEITH NORMAN,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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2:09-CV-0056

**REPORT AND RECOMMENDATION TO DENY  
PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner has filed with this Court a petition for a writ of habeas corpus challenging an October 21, 2008 prison disciplinary proceeding which resulted in the loss of 90 days of previously earned good time credits. The disciplinary proceeding took place at the Clements Unit in Potter County, Texas. As of the date the instant habeas application was filed, petitioner was still incarcerated in the Clements Unit.

In order to challenge a prison disciplinary adjudication by way of a federal petition for a writ of habeas corpus, a petitioner must (1) be eligible for mandatory supervised release; and (2) have received a punishment sanction which included forfeiture of previously accrued good time credits. *See Malchi v. Thaler*, 211 F.3d 953, 958 (5<sup>th</sup> Cir. 2000). Petitioner is in respondent's custody pursuant to an October 3, 2007 conviction for the felony offense of bail jumping/failure to appear out of McLennan County, Texas. Such an offense is eligible for release to mandatory

supervision. Petitioner avers in his application, however, that he is not eligible for mandatory supervised release. TDCJ-CID online offender information also reflects petitioner is not eligible for mandatory supervised release in that petitioner's projected release date of July 11, 2013 is the same date as petitioner's maximum sentence date.<sup>1</sup> Therefore, while petitioner may have lost good time in his disciplinary proceeding, petitioner is not eligible for mandatory supervised release and cannot be afforded federal habeas corpus relief.

### RECOMMENDATION

It is the RECOMMENDATION of the undersigned United States Magistrate Judge to the United States District Judge that the petition for a writ of habeas corpus filed by petitioner BRIAN KEITH NORMAN be DENIED.

### INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 17th day of March 2009.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>Inquiry to TDCJ-CID reveals petitioner was previously convicted of the offense of sexual assault in 2002. Since 1996, an inmate may not be released to mandatory supervision if the inmate "has been previously convicted of" enumerated offenses, including sexual assault. Tex. Gov't Code § 508.149(a)(5).

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be **filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5<sup>th</sup> Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5<sup>th</sup> Cir. 1988).